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BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

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Joint Application of

AMERICAN AIRLINES, INC. and
EXECUTIVE AIRLINES, INC., FLAGSHIP
AIRLINES, INC., SIMMONS AIRLINES,
INC., and WINGS WEST AIRLINES, INC.
(d/b/a AMERICAN EAGLE)

and

CANADIAN AIRLINES INTERNATIONAL, LTD.,
and ONTARIO EXPRESS LTD. and TIME AIR
INC. (d/b/a/ CANADIAN REGIONAL) and
INTER-CANADIAN (1991) INC.

for approval of and Antitrust Immunity for
Alliance Agreements pursuant to 49 U.S.C.
§§ 41308 and 41309

Docket OST-95-792 -18

ANSWER OF NORTHWEST AIRLINES, INC.

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February 6, 1996

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Docket OST-95-792

ANSWER OF NORTHWEST AIRLINES, INC.

Northwest Airlines, Inc. ("Northwest"), pursuant to Order 96-1-6 issued and served by the Department on January 11, 1996, hereby files the following Answer to the Joint Application of American Airlines, Inc. ("American"), and its regional affiliates, and Canadian Airlines, International ("CAI"), and its regional affiliates, for antitrust immunity for their commercial alliance agreement (the "Joint Application"). For the reasons set forth below, the Joint Application either should be denied or action upon it should be deferred until such time as the United States and Canada have entered into a true "open skies" agreement.

It is the Department's longstanding policy to consider antitrust immunity for cooperative marketing alliances only in

circumstances where an "open skies" aviation agreement is in place. The rationale for this policy is twofold. First, the existence of an open skies regime leaves other U.S. carriers free to mount competitive responses to meet consumer demand and reflect the inter-play of market forces.¹ Second, the availability of antitrust immunity serves as a strong inducement for other trading partners to liberalize their aviation regimes with the United States.² The Department thus properly considers the existence of an open skies agreement to be an essential, but not sufficient, prerequisite to the grant of antitrust immunity.³

In the context of the Department's initiative to negotiate open skies agreements with European countries, the Department issued an Order establishing its definition of "open skies." Order 92-8-13 (Aug. 5, 1992). In that Order, the Department outlined eleven basic elements to an open skies agreement. As

¹ See Joint Application of Northwest-KLM for Antitrust Immunity, Show Cause Order 92-11-27 at 15-16 (Nov. 16, 1992) ("Because of the Open Skies accord, any U.S. carrier may serve the Netherlands from any point in the United States. As a result, other carriers have the opportunity and ability to enter the U.S.-Netherlands market and to increase their service if the applicants try to raise prices above competitive levels (or lower the quality of service below competitive levels)."

² See Id. at 14 ("We look to our Open Skies accord with the Netherlands and our approval and grant of antitrust immunity to the [Northwest-KLM] Agreement to encourage other European countries to agree to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers.")

³ The Department also must make a specific determination as to whether a proposed alliance would "substantially reduce or eliminate competition." 49 U.S.C. § 41309 (a)(1). See also Joint Application of Northwest-KLM for Antitrust Immunity, Final Order 93-1-11 (Jan. 11, 1993).

demonstrated in the chart below, the U.S.-Canada Air Transport Agreement executed on February 24, 1995 lacks several of the core elements of an open skies agreement. The chart's comparison of the U.S.-Canada and U.S.-Netherlands bilaterals is particularly telling in this respect.

OPEN SKIES ELEMENTS	US-CANADA	US-NETHERLANDS
1. Open entry on all routes;	No	Yes
2. Unrestricted capacity and frequency on all routes;	No	Yes
3. Unrestricted route and traffic rights, that is, the right to operate service between any point in the U.S. and any point in the European country, including no restrictions as to intermediate and beyond points, change of gauge, routing flexibility, coterminalization, or the right to carry Fifth Freedom traffic;	No	Yes
4. Double-disapproval pricing in Third and Fourth Freedom markets and (a) in intra-EC markets: price matching rights in third-country markets, (b) in non intra-EC markets: price leadership in third-country markets to the extent that the Third and Fourth Freedom carriers in those markets have it;	Yes	Yes
5. Liberal charter arrangement (the least restrictive charter regulations of the two governments would apply, regardless of the origin of the flight);	No	Yes
6. Liberal cargo regime (criteria as comprehensive as those defined for the combination carriers);	No	Yes
7. Conversion and remittance arrangement (carriers would be able to convert earnings and remit in hard currency promptly and without restriction);	Yes	Yes
8. Open code-sharing opportunities;	No	Yes
9. Self-handling provisions (right of a carrier to perform/control its airport functions going to support its operations);	Yes	Yes
10. Procompetitive provisions on commercial opportunities, user charges, fair competition and intermodal rights; and	Yes	Yes
11. Explicit commitment for nondiscriminatory operation of and access for computer reservation systems.	No	Yes

It is clear that the U.S.-Canada bilateral, albeit more liberal than the regime that preceded it, lacks many of the essential characteristics of an "open skies" agreement. Most notably, during the "transition phase" of the U.S.-Canada bilateral, U.S. carriers are significantly restricted in their ability to serve the three most important Canadian markets, Toronto, Vancouver and Montreal. The bilateral's transitional restrictions have completely foreclosed Northwest from serving the largest Canadian market, Toronto, from two of Northwest's three hubs, Minneapolis and Memphis. The transitional restrictions also have constrained Northwest's ability to respond to market demand and effectively compete with Canadian flag carriers by increasing capacity in the Montreal and Vancouver markets.

In addition, despite the significant consumer and competitive benefits of code-sharing outlined in the Department's U.S. International Air Transportation Policy Statement, 60 Fed. Reg. 21841-45 (May 3, 1995), the U.S.-Canada bilateral leaves third-country code-sharing to the discretion of the two governments. It clearly would be contrary to the public interest to grant the American/CAI alliance antitrust immunity where the ability of other U.S. carriers to compete with that alliance through alliances of their own (such as Northwest-KLM) is purely within the discretion of the Canadian Authorities.

The U.S.-Canada bilateral falls short of a number of the other "open skies" criteria identified by the Department as well:

- For combination services, fifth freedom rights are not permitted except for one U.S. airline designated on one route: U.S.-Gander-Europe and beyond. The bilateral does not permit sixth freedom traffic on a single through flight number.

- For all-cargo services, the bilateral does not permit fifth or sixth freedom operations. During the first year of the agreement, U.S. carrier all-cargo services to Montreal, Vancouver and Toronto are restricted. All-cargo courier services cannot be co-terminalized unless the authority was in existence as of the date of the agreement.
- The bilateral has a country of origin charter regime, rather than a "Belgian" regime which applies the least restrictive rules of the two governments, regardless of the origin of the flight.
- The bilateral does not contain an explicit commitment for nondiscriminatory operation of and access to CRSS. Rather, the article on CRSS simply acknowledges that each side has national laws with which operators in that territory must comply.

The Department's policy of considering antitrust immunity only when an open skies regime is in place is a sound one. Granting the American-CAI Joint Application notwithstanding the significant restrictions that today burden U.S. carriers in general, and Northwest Airlines in particular, would be anticompetitive and would send a message to this nation's trading partners that they need not open their skies as a prerequisite to securing antitrust immunity. Such an outcome would eviscerate the very fabric of the Department's 1995 International Policy Statement.

WHEREFORE, Northwest Airlines, Inc. respectfully urges the Department either to deny the Joint Application or defer action upon it until such time as the U.S.-Canada bilateral satisfies the core elements

of an "open skies" arrangement as previously identified by the Department.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Megan Rae Poldy", with a long horizontal flourish extending to the right.

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February 6, 1996

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I hereby certify that on this 6th day of February 1995, I served a copy of the foregoing document of Northwest Airlines on the following individuals by first class mail, postage prepaid.

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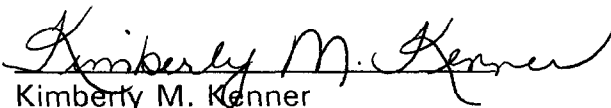
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